

NGIRAMULEI, Appellant

v.

MALCHIYANGED RIDEB, Appellee

Civil Action No. 223

Trial Division of the High Court

Palau District

December 27, 1962

Action on contract under which buyer agreed to purchase boat from seller for certain sum, with mortgage of buyer's other boat to secure performance. Upon buyer's default under the contract, seller repossessed other boat. The Palau District Court awarded both boats to seller, holding that value of mortgaged boat constitutes use rental of seller's boat. On appeal, the Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that local custom regarding payment of use rental of boat exchanged under purchase agreement is controlling.

Modified in part and affirmed in part.

1. Sales—Repossession of Goods

As a general rule, seller is not entitled as matter of right, where title to goods has passed from him to buyer, to retake possession of goods sold on credit on sole ground that buyer failed to make payment as promised.

2. Custom—Applicability

Trial court in Trust Territory may properly base its decision on local custom where customary law is not in conflict with laws of Trust Territory or laws of United States in effect in Trust Territory. (T.T.C., Sec. 21)

NGIRAMULEI v. RIDEB

3. Custom—Applicability

Principles of common law do not govern case in Trust Territory where local customary law to the contrary is applicable. (T.T.C., Sec. 22)

4. Palau Custom—Installment Sales

Under Palau custom, if party purchases canoe or boat and takes boat in advance of payment, and later finds he no longer wants boat and returns it, he must pay for use rental of boat.

5. Palau Custom—Installment Sales

If purchaser of boat elects to pay for boat in accordance with contract, he is to be given credit for difference between value of mortgaged boat taken by seller under terms of agreement, and cost of necessary repairs made by seller to boat purchased under contract after it had been in seller's possession.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellant:</i>	JOHN O. NGIRAKED
<i>Counsel for Appellee:</i>	N. S. ITELBANG

KINNARE, *Associate Justice*

This is an appeal from a judgment of the District Court awarding possession of two boats to the defendant, appellee herein.

THE FACTS

On October 20, 1960, appellant, purchaser and plaintiff below, and appellee, seller and defendant below, entered into an agreement, as follows:—

“CONTRACT

October 20, 1960

Seller: Malchianged Ridep

Purchaser: Ngiramulei

I, the purchaser of the boat, agree to do the following things:—

The motorboat (outboard motorboat), with an engine of Johnson Model at 18 horsepower, I am going to purchase for \$400.00.

I have a boat with an engine that I would like to mortgage and give to Malchianged Ridep. I acknowledge to the fact that if the

contractual term expires without payment, Malchianged would be authorized to hold the boat and he either sells it or owns it.

The term of the contract of payment of \$400.00 begins today, October 20, 1960, and ends on December 15, 1960. On the expiration date I will pay the whole amount to Malchianged or send it to him.

I will therefore sign my name below to show that I have truly and faithfully agreed to the above statement. I sign my name below in presence of Malchianged to assure him that this is my true statement.

/s/ Sylvester F. Alonz
Witness

/s/ Mulei
Purchaser

/s/ Malchianged R.
Seller"

To avoid confusion, the boat appellant was "going to purchase" from appellee will hereafter be referred to as the "outboard boat", and the boat that appellant "would like to mortgage" will be referred to as the "motorboat".

At, or very close to, the time of the agreement set forth above, appellant delivered the motorboat to appellee, and, at or about the same time, appellee delivered the outboard boat to appellant.

Appellant did not pay appellee \$400.00 on December 15, 1960, or any other sum, nor has he paid or tendered payment, in any amount, since that date. Appellee has retained the motorboat and, shortly after December 15, 1960, repossessed the outboard boat, taking it, without violence, from the custody of a third person with whom appellee had left it.

The trial court found, as a matter of fact, that when the appellee repossessed the outboard boat, after it had been in appellant's possession for fifty-eight days, appellee spent \$103.00 in repairing it because it was not working. The judgment of the trial court was:—

- "(a) that the outboard motorboat goes back to the defendant.
- (b) that the 18 foot boat and its engine with a value of \$150

also goes back to the defendant as terekel a mlai, or use rental of the defendant's boat."

Appellant's ground of appeal is that the parties entered into a valid sale contract, that therefore title to the outboard boat is now in the appellant. He concedes that appellee is entitled to the motorboat under the terms of the contract, as payment by appellant was not made by the date agreed upon, but contends that appellee, having exercised his right under the penalty clause, has exhausted his remedies, and must proceed at law, by appropriate action, to recover the purchase price agreed upon. The trial court, he argues, should have either enforced the terms of the contract or placed the parties in their original positions, returning the motorboat to appellant, the outboard boat to appellee, and leaving appellee to seek whatever damages he is entitled to in an action for breach of contract.

Appellee argues that the evidence and the local custom cited by the trial court amply support the judgment.

OPINION

[1-4] It is certainly true that, as a general rule, under American law a seller is not entitled as a matter of right, where title to the goods has passed from him to the buyer, to retake possession of goods sold on credit on the sole ground that the buyer has failed to make payment as promised.

"Where the sale is on credit or where cash payment is waived on delivery of the property, the mere failure of the buyer to pay the price does not entitle the seller to recover the property; the title thereby passes to the buyer, and the remedy of the seller is against the buyer personally." Am. Jur., Vol. 46, Sales, § 563.

However, the trial court based its decision on local custom, as it properly could.

“Sec. 21. Local Customs. The customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory or the laws of the United States in effect in the Trust Territory shall be preserved. The recognized customary law of the various parts of the Trust Territory, in matters in which it is applicable, as determined by the courts, shall have the full force and effect of law, so far as such customary law is not in conflict with the laws mentioned in Section 20.”

This is not a case which must be governed by the principles of the common law.

“Sec. 22. Common law applicable; exceptions. The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in cases to which they apply, *in the absence of written law applicable under Section 20 hereof or local customary law applicable under Section 21 hereof to the contrary. . . .*” (Emphasis supplied)

Here, it appears that the recognized customary law of the Palau Islands is clearly applicable. The trial court stated it as follows:—

“The principles of buying a boat under local customs, a man planning to purchase a canoe or a boat and having taken the boat in advance if he finds he no longer wants the boat and returning it, he has to pay some money as ‘terekel a mlai’ or use rental of the boat.”

[5] It seems clear, however, that the appellant, if he elects to make payment for the outboard boat in accordance with the terms of his contract, should have credit for the difference between the value of the motorboat taken by appellee under the terms of the agreement between appellant and appellee (\$150.00) and the cost of the necessary repairs made by appellee to the outboard boat after it had been in appellant’s possession (\$103.00).

LIKAUCHE v. TRUST TERRITORY

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. If the appellant pays three hundred fifty-three dollars (\$353.00) to appellee within sixty (60) days from the date of this judgment, the outboard boat shall be returned to him by appellee, in as good condition as when it was first delivered to appellant by appellee, except for the fair wear and tear suffered while it was in possession of appellant or appellee.
2. Within this modification, the judgment of the trial court is affirmed.
3. No costs are assessed against either party.